

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re

JOHN PERPINAN,

No. 05-14638

Debtor(s).

JEFFRY LOCKE, Trustee,

Plaintiff(s),

v.

A.P. No. 06-1057

JOHN PERPINAN,

Defendant(s).

Memorandum After Trial

Before bankruptcy, debtor and defendant John Perpnan was a contractor. At the time he sold his home on July 12, 2005, a property owner was actively suing Perpnan for damages arising out of a construction contract and was nearing a judgment. Because of this lawsuit, Perpnan took most of his net proceeds from the sale, about \$120,000.00, in cash and cashier's checks.

Perpnan filed his Chapter 7 petition on October 16, 2005, claiming as exempt the \$48,000.00 he said he had left from the sale proceeds as exempt pursuant to California homestead law. Under the rule

1 of *In re Golden*, 789 F.2d 698 (9<sup>th</sup> Cir. 1986), those proceeds would become property of the estate if not  
2 reinvested in a new homestead by January 12, 2006.

3 In this adversary proceeding, the bankruptcy trustee seeks to deny Perpnan a discharge for  
4 concealing the proceeds of the sale of the home by keeping them in the form of cash and cashier's checks.  
5 He also seeks turnover of the \$48,000.00, alleging that Perpnan never validly purchased a new home.

6 Perpnan testified that he kept his home sale proceeds in cash because he felt that if he put them in  
7 his bank account the attorney for the property owner would "steal" them. When asked exactly what he  
8 meant by that, Perpnan testified at trial that "What I thought he was going to do was lie to the courts."

9 A debtor who has kept assets in cash in order to hinder efforts to get them by a creditor may not  
10 receive a discharge. *In re Bernard*, 96 F.3d 1279 (9<sup>th</sup> Cir. 1996); *In re Schafer*, 294 B.R. 126  
11 (N.D.Cal.2003). It is up to the courts only to decide if an attorney is lying to them. A debtor is not free  
12 to decide on his own that an attorney is lying to the courts so that hindering the attorney's efforts on  
13 behalf of a creditor is justified. Accordingly, Perpnan's discharge must be denied pursuant to §  
14 727(a)(2) of the Bankruptcy Code.

15 Under California law, a homestead exemption must be denied if it based on a sham. *Ellsworth v.*  
16 *Marshall* (1961) 196 Cal.App.2d 471, 474.<sup>1</sup> In this case, the court concludes that Perpnan's purchase  
17 of a new homestead was a sham for the following reasons:


- 18 1. The new homestead was a 4.5% interest in property owned by Perpnan's mother.
- 19 2. The \$48,000.00 purchase price was paid by a cashier's check which Perpnan's mother never  
20 cashed.
- 21 3. The day after his mother's deed to him was recorded, Perpnan executed a quitclaim deed to  
22 his mother.
- 23 4. Perpnan's mother returned the \$48,000.00 cashier's check to him.

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25 <sup>1</sup>In order for a homestead claim to be valid, the debtor must actually reside in property in which  
26 he has an ownership interest. In *Ellsworth*, the debtor's alleged residence was a sham. In this case,  
residence was real but ownership was a sham.

1 For the foregoing reasons, Perpinan's discharge will be denied and he will be ordered to turn  
2 over \$48,000.00 to plaintiff, who shall also recover his costs of suit.

3 This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and  
4 FRBP 7052. Counsel for plaintiff shall submit an appropriate form of judgment forthwith.

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6 Dated: December 4, 2006

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9 Alan Jaroslovsky  
10 U.S. Bankruptcy Judge  
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